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A-S

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/690,136	07/31/96	BRADY K	96B011

IM62/1011

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EXAMINER	
TARAZANO, D	
ART UNIT	**PAPER NUMBER**
1773	26

DATE MAILED: 10/11/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.	Applicant(s)
08/690,136	Brady et al.
Examiner	**Group Art Unit**
D. Lawrence Tarazano	1773

☒ Responsive to communication(s) filed on *Jul 10, 2000*.

☒ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire *3* month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) *19-50* is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) *19-50* is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐approved ☐disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

DETAILED ACTION

Claim Objections

1. Claim 42 is objected to because of the following informalities: It has two periods. Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 19-24 29, 32, 35, and 48 a rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "polymer-based film" is confusing; the examiner suggests languages such as "polymeric film". As the claim is written, it is not clear if the film is made of a polymeric material; the term "polymer based" recites the origin of the materials not what is actually there.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

5. Claims 19, 20, 21, 22, 25, 29, 30, 35, 38, 39, 40, 48, and 49 are rejected under 35 U.S.C. 102(e) as being anticipated by Wu et al. (5,865,926).

Wu et al. teach films which have been embossed by grooved rollers (figures 1 and 2). The films are porous as shown by example 1, have the claimed WVTR , and are olefin / filler compositions which have been laminated to a non-woven fibrous web. The laminated structure is passed through intersecting grooved rollers so the entire structure including the non-woven fibrous web has been passed through the grooved rollers. Example 1 is made by lamination / extrusion which results in a two layer structure with no adhesive layer, this two layer structure would be the same as the applicants heat bonded structure.

The other examples use a layer of adhesive which would correspond to the applicant's second film in which these structures have vapor permeabilities in the claimed range.

While the applicant's recite various processing conditions relating to the extent of rolling and the temperature of the rollers, there is nothing on the record to establish that theses recited processing conditions results in a materially different product.

Article claims which recite process steps are not limited to the manipulations of the recited steps, only the structure implied by the steps. "Even though product - by process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product - by - process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe , 227 USPQ 964, 966 (Fed. Cir. 1985).

6. Claims 26-28, 31, 37, 43, 44, 45, 46, and 50 are rejected under 35 U.S.C. 102(b) as being anticipated by Sheth et al. (5,055,338).

Sheth et al. teach embossed films which are then metallized. These films are produced from a blend of polyethylene material and inorganic filler (50/50 blend of LLDPE and calcium carbonate) and polyisobutylene, example 1). The films also can comprise elastomers to improve the strength and softness of the resulting films (column 5, lines 13+).

The films are formed by a tubular extrusion process which results in the formation of a tubular film which is blown, and then stretched on rollers using conventional techniques. The tubular film is embossed after it has been formed (columns 5 and 6), especially column 6, lines 8+.

A collapsed tubular film as shown by Sheth et al. would correspond to the claimed two layer structure. These films have high WVTR relates in both the metallized and un-metallized forms as shown by example 1. While the example is produced by cast extrusion, Sheth et al. teach how to produce blown films with very clear specificity and thus the claimed two layer structure is anticipated.

While the applicant's recite various processing conditions relating to the extent of rolling and the temperature of the rollers, there is nothing on the record to establish that theses recited processing conditions results in a materially different product.

Article claims which recite process steps are not limited to the manipulations of the recited steps, only the structure implied by the steps. "Even though product - by process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product - by - process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe , 227 USPQ 964, 966 (Fed. Cir. 1985).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary

skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claims 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wu et al. (5,865,926).

Wu et al. teach embossed film composites as discussed above. However, they are silent regarding the change in the size of the structure when they are passed through the rollers.

However, since the extent of stretching / embossing would relate to the size of the porous around the particles used, and the three dimensional size of the laminate, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have varied the extent of stretching / embossing and the amount of particles present depending on the extent of water vapor transmission desire, since increased stretching/ embossing would decrease the over all size of the laminate, but contribute to the porosity of the laminate.

9. Claims 23, 24, 41, and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wu et al. (5,865,926) in view of Sheth et al. (5,055,338).

Wu et al. as discussed above is silent regarding the use of elastomers. However, Sheth et al. teach that the addition of elastomers in olefin permeable films results in stronger structures. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have included olefin elastomers including commercially available materials such styrene/isoprene or styrene

/butadiene materials (KRATON), in the films taught by Wu et al. in order to make the structures stronger.

10. Claim 34 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sheth et al. (5,055,338)

Sheth et al. teach embossed film composites as discussed above. However, they are silent regarding the change in the size of the structure when they are passed through the rollers.

However, since the extent of stretching / embossing would relate to the size of the porous around the particles used, and the three dimensional size of the laminate, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have varied the extent of stretching / embossing and the amount of particles present depending on the extent of water vapor transmission desire, since increased stretching/ embossing would decrease the over all size of the laminate, but contribute to the porosity of the laminate.

Regarding claim 46, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have included olefin elastomers including commercially available materials such styrene/isoprene or styrene /butadiene materials (KRATON), in the films taught by Sheth et al. in order to make the structures stronger

Response to Arguments

11. Applicant's arguments filed 7-10-2000 have been fully considered but they are not persuasive. The applicant argue that their process results in a film / non-woven fabric composites having a structure different from that taught by Wu et al. (5,865,926). or Sheth et al. (5,055,338) However, there nothing on the record to support this allegation.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. Lawrence Tarazano whose telephone number is (703) 308-2379. The examiner can normally be reached on M-F from 8:30 am to 5:30 pm.

The official fax number for the art unit is (703)-305-3599. The special fax number for amendments after final is (703)-305-5408. The number for unofficial faxes is (703)-305-5436.

D. Lawrence Tarazano
October 10, 2000

Paul Thibodeau
Supervisory Patent Examiner
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